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File. No. O. Stamps 5/50

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian Stamps Act, 1899

§ 21 (E)

C O N T E N T S.

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* L Adaptation of Laws Order, 1950. Sec. 4.

C O N T E N T S.

Legal Department File No. C. Stamps / 50

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11	C.No.15927/15-11-50	Question whether a document executed before the merger of State and property stamped according to the State law then in force, can be taken as properly stamped, under the Indian Stamp Act, 1899, it is to be acted upon on or after the date of merger of that state.	33-34
12	C.No.16729/25-11-50 (L.D. letter forwarding R.L.A's opinion)	Sec. 2(15), and article 45 of the schedule. Re Suit for partition of the property, question whether the decree is liable to stamp duty as a partition decree under article 45 of the schedule to the Act.	35-38

L.D.R.I. No. 1009 dated 18-1-50.

Submitted.

The question for R.L.A.'s consideration is whether in the case of documents executed in the United States of Saurashtra the stamp duty is to be levied under sec. 18 or section 19 of the Indian Stamp Act, 1899.

R.D.P.
22/6/56
S.C.

No. 3968.
Office of the
Remembrancer of Legal Affairs.
Bombay Castle (Bombay No.1), 22nd March 1950

To
The Superintendent of Stamps,
General Stamp Office,
Bombay No. 1.

Subject: Stamp duty on documents executed in the States like Saurashtra.

Sir,

With reference to your letter No. 454/S dated 14-1-1950 in connection with the above subject, I have the honour to state that the view expressed by you, that section 18 would be applicable, is correct.

Yours faithfully,

Id/- (P.M.L.)
22/3
Remembrancef of Legal Affairs.

R.D.P.
23/6/56

S.C.

Office of the R. L. A.

The United State of Saurashtra has applied to the Bombay High Court under section 244-B (5) of the Indian Companies Act for an order directing the payment to it of Rs. 8,78,100 being the amount payable on account of the first distribution of capital in respect of 17,562 shares in the Bombay Electric Supply and Tramways Co., Ltd. (in liquidation) standing in the name of H.H. the Maharaja of Gondal. These shares became the property of the United State of Saurashtra by virtue of article 6 of the ~~Government~~ Covenant dated the 19th January 1948 executed by the various Rulers of Kathiawar States.

2. The Registrar of Companies is of the opinion that the transfer of shares from H.H. the Maharaja of Gondal to the United State of Saurashtra is not complete merely by virtue of article 6 of the Covenant but a further instrument of transfer would be necessary and that proper stamp duty in respect of such instrument would be patable. He, therefore, objects to an order being made on the application of the United State of Saurashtra unless the applicant is directed to execute a proper instrument and to pay the full stamp duty.

3. Assuming for the time being that a proper instrument of transfer between H.H. of the Maharaja of Gondal and the United State of Saurashtra is necessary, under section 29 of the Stamp Act, the expenses of providing proper stamp in respect of an instrument for transfer of shares of an incorporated company are to be borne by the person drawing, making or executing such instrument. Since both H. H. the Maharaja of Gondal and the United State of Saurashtra will be parties to the instrument, both of them are liable to

provide the stamp expenses but since the section is subject to an agreement to the contrary, it is open to the United State of Saurashtra to agree to bear the stamp expenses. Under proviso 1 to section 3 of the Stamp Act, no stamp duty is chargeable in respect of anninstrument executed by or on behalf or in favour of the Crown in cases where, but for this exemption, the Crown would be liable to pay the duty chargeable in respect of such instrument. The word "Crown" appearing in that section will now by virtue of section 4 of the Adaptation Order, 1950, be substituted by the word "Government" which read with sub-sections (23) and (60) of section 3 of the General Clauses Act, 1897 (as adapted), will include the Government of a State mentioned in part B of Schedule I to the Constitution. The United State of Saurashtra will, therefore, be entitled to claim exemption under the proviso to section 3 of the Stamp Act.

4. Since the principal objection raised by the Registrar is only the loss of stamp revenue, it does not appear necessary to object to the payment merely on the ground that there is no valid transfer executed by the parties.

Id/- (P.M.L.)
21/2
Remembrancer of Legal Affairs.

U.R. to F.D.No. 2578, dated the 22nd February 1950

R.D.P.
23/6/56

S.C.

Office of the R. L. A.

Constitution of India Act, 268
Indian Stamps Act, Section 9.

Under Article 268 of the Constitution of India power to levy such stamp duties as are mentioned in the Union List vests in the Government of India, while the power to collect such stamp duties vests in State Governments other than those mentioned in Part C of the First Schedule. Under item 91 of List I (Union List) in the Seventh Schedule the power to levy stamp duty on receipts vests in the Government of India. Section 9 of the Indian Stamp Act, 1899, has been adapted for the purpose with the result that the word 'collecting' in that section has been omitted and the expression 'the Government has been defined in section 9 sub-section (2) which has been inserted. Consequently, the power to remit or reduce the stamp duty on receipts vests in Central Government with whom the power to levy rests. The Provincial Government, which merely collects the stamp duty, has no power to reduce or remit the stamp duty on receipts.

Id/- (P.M.L.)
16/6
Remembrancer of Legal Affairs.

U.R. to E.D.No.8355, dated the 19th June 1950.

R.D.P.
23/6/56

S.C.

L.D.R.I.No. 18953 dated 18-11-1949.

Submitted.

R.D. proposes to issue the draft G.R. at p. 15 ante containing the following directions r e. registration and stamping of documents in merged States, viz:

(1) The period prescribed under the Indian Registration Act, 1908 should be allowed for presentation of documents executed on the State stamp paper but presented for registration on or after the date of application of that Act to the area comprising the State concerned, after merger.

(2) A document executed before the merger of a State and properly stamped according to the State law then in force, should be taken to be ~~xxkxx~~ properly stamped under the Indian Stamp Act 1899, if it is to be acted upon on or after the date of merger of that State.

(3) Power of Attorney authenticated by an officer, recognised under the corresponding State Law, before the merger of that State, should be recognised for the purpose of Indian Registration Act, 1908 from the date of its application.

The question for R. L. A's considerationmis whether there is any objection to the issue of the above orders.

R.D.P.
~~Xxx~~ 23/6/56

S.C.

Office of the R.L.A.

There is no legal objection to the Government Resolution being issued as proposed.

2. The case referred by Superintendant of Stamps stands on a different footing in as much Saurashtra is a Part-B-State.

Id/- (P.K.L.)
8/7
Remembrancer of Legal Affairs.

U.R. to R.D.No.9590, dated the 10th July 1950.

R.D.P.
23/6/56

S.C.

Office of the R.L.A.

Indian Stamp Act, 1899, Schedule I, articles 23 & 45. Whether a deed of release by one of the brothers forming a joint family is a partition or conveyance.

An instrument between co-sharers which purports to be a release may be in substance a conveyance (see In Re Hiralal, 32 Bombay 505) or a deed of partition (In Re Govind Pandurang, 35 Bombay 75) and liable to duty as such, but not when the deeds do not proceed on the basis of an admitted co-ownership (see Jiban Kunwar V. Govind Das 38 Allahabad 56) (Mullas Stamp Act, p. 227). "Conveyance" as defined in section 2(10) of the Indian Stamp Act includes a Conveyance on sale and every instrument by which property whether moveable or immoveable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. It is therefore, apparent that this is a residuary definition and does not apply to reconveyance for which there is a special provision in articles 22, 31, 33, 35, 40, 41, 58, 62, 63 and 64 (see Mulla's Stamp Act, p.20). "Partition" falls under article 45 of the Schedule. Consequently, even if a document falls under article 45, it will have to be considered as conveyance and stamped as such if it falls under the definition of section 2(10). Release of an interest will have to be considered from two aspects: (1) conveying that interest for a consideration and (2) release of interest for a consideration amounting to partition and taking in lieu of the share, cash as consideration. If one of the co-owners releases his interest in favour of the other for a consideration, on the authority of In Re. Govind Pandurang-35 Bombay 75 the release deed will have to be construed as a partition.

It was held in that case that if co-ownership is admitted, each instrument purporting to be a release is chargeable under article 44 as an instrument of partition. In the present case there was a disruption of the joint family and after division of moveables, one of the brothers releases his interest in the immoveable property in favour of his other two brothers and mother for a consideration of Rs. 1,500. Once the family is disrupted, the co-parceners would hold the property as tenants-in-common. In other words, they would be mere co-owners and if one of the co-owners as in the present case releases his interest in favour of the others for a consideration, it would amount to partitioning the property and receiving a certain sum in lieu of his share. Consequently the deed in question would amount to a partition and requires to be stamped as such.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D.No.9359, dated the 13th July 1950.

R.D.P.
23/6/56

S.C.

No.9566.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 8th July 1950.

To
The Superintendent of Stamps,
General Stamp Office,
Bombay.

Subject:- Stamp duty on documents executed in the States prior to their merger in the Dominion of India.

Sir,

With reference to your letter No. 9586/S, dated 15th October 1949, I have the honour to forward herewith my opinion in the above matter. The accompaniments of letter under reference are returned herewith.

Yours faithfully,

Id/- (P.M.L.)
7/7
Remembrancer of Legal Affairs.

R.D.P.
23/6/66

S.C.

Office of the R.L.A.

Indian Independence (Adaption of Central Acts and Ordinances) Order, 1948, sec. 2.
Indian Stamp Act, 1899, secs. 1(2), 3(c) and 18.
Adaptation of Laws Order, 1950, sec.4.

By section 2 of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948 the expression 'British India' occurring in any Central Act or Ordinance specified in the Schedule to the said Order (which includes the Indian Stamp Act,1899) was substituted by the expression "Provinces" which expression was again substituted by the word "States" by virtue of the Table appearing in section 4 of the Adaptation of Laws Order, 1950. Further section 1(2) of the Stamp Act as adapted under the latter Order provides that the Act extends to the whole of India except Part-B-States. United States of Saurashtra is a Part-B-State and therefore the provisions of the Indian Stamp Act, 1899 never applied nor do they now apply to the territories of Saurashtra.

The principal documents recited in the document dated the 31st August 1949 were executed at Rajkot in Saurashtra but it appears that they relate to property situate in the State of Bombay or to some matter or thing to be done in the State of Bombay (No authentic translation of these documents appears in the papers). They will therefore be liable to duty under section 3(c) and for that purpose it may be necessary to follow the procedure laid down in section 18. It is only after the principal documents are properly stamped with the duty prescribed for them under the First Schedule to the Stamp Act that the supplemental document will be entitled to the benefit of being chargeable with nominal duty of Rs. 3/-.

R.D.P.
23/6
S.C

Id/- (P.M.L.)
7/7
Remembrancer of Legal Affairs.

R.I.No. 16345
21-9-1950

Submitted.

In his letter dated 17th September 1949 the Examiner of L.F.Accounts states that the Principle of charging additional stamp duty in case of agreements accompanied by deposits in cash made for due performance of those agreements is applicable to agreements providing for security deposits recoverable from a party in cash or Govt. securities prescribed in Rule 135 of the Bombay Local Board Account Code. Rule 135 of the Bombay Local Boards Account Code, 1935 provides as foldows:-

> " 135. Security shall in all cases be taken from every contractor for the due fulfilment of the contract and shall be either in the shape of a lump sum to be fixed by the Engineer or a deduction of 10 per cent made from the bills payable to the contractor. Such security shall be returned to the contractor, only after completion of the work and full satisfaction of the Board's claim against him. The amount of security shall be credited to the register of deposit."

The Superintendent of Stamps states that if, in such an agreement, the amount of the deposit has been actually kept to secure the due performance of an engagement, then alone that document will be liable to stamp duty under Art. 40(a) in addition to Art. 5(c). But if the amount of deposit is not paid before or at the time of execution of the document but has been agreed to be paid later on, the document will be chargeable with duty under Act. 5(c) only as the property not being in existence no charge can be deemed to have been created over it. He further states that if the deposit is in marketable securi-

securities the document would be liable to an additional stamp duty of Rs. 1-8-0 R.D. is of the view that such agreements would be governed by the principle laid down in G.R.R.D.No. 8453/45 dated 14-8-1948. The R.L.A. is requested to advise in the matter.

R.D.P.
23/6/56

S.C.

Office of the R. L. A.

Seen and returned.

2. The view taken in para. 2 of R.D. note at page 55 ante is correct.

Id/- (P.M.L.)
31/10
Remembrancer of Legal Affairs.

U.R. to R.D.No.15227, dated the 1st November 1950

R.D.P.
23/6/56

S.C.

Office of the R.L.A.

A document executed before the merger of a State and properly stamped according to the State Law then in force, should be taken to be properly stamped, under the Indian Stamp Act, 1899, if it is to be acted upon on or after the date of merger of that State (See Government Resolution, Revenue Department No. 1589/45 dated 17-8-1950).

Id/- (P.M.L.)
14/11
Remembrancer of Legal Affairs.

U.R. to P.W.D.No.15827, dated the 15th November 1950.

R.D.P.
23/6/56

S.C.

No. 16729.
Office of the
Remembrancer of Legal Affairs,

Bombay Castle(Bombay No.1), 28th November 1950.

From

Shri R. M. Lad, I.C.S.,
Remembrancer of Legal Affairs,
Bombay.

To

The Superintendent of Stamps,
General Stamp Office,
Bombay.

Subject:- Payment of Stamp Duty on decree passed in suit No. 1677 of 1929.

Sir,

With reference to your letter No. 11909/5 dated the 27th October 1950, I have the honour to send herewith my opinion on the subject noted above.

Yours Faithfully,

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

R.D.P.
23/6/56

S.C.

Office of the R.L.A.

Indian Stamp Act, 1899 section 2(15) and article 45 of the Schedule

It appears that by the decree passed in the administrative suit in the present case it has been declared that the pdaintiff, second defendant and third defednat were entitled to moveable and immoveable properties as tenants-in-common subject to the charges created in favour of the 4th, 5th and 6th defedants and the shares of the heirs have been defined for the final order of the Court in stated proportion. The parties have to hold the properties not as joint tenants but as tenants-in-common in equal shares. The question raised for R.L.A.'s consideration is whether the decree is liable to stamp duty as a partition decree under article 45 of the Schedule to the Indian Stamp Act.

Under article 45 of the Schedule to the Indian Stamp Act, the stamp for a partition deed is prescribed. "Instrument of partion" as defined in section 2 clause (15) means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and it includes also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and an award by an arbibrator directing a partition. The words 'final order xfor effecting partition' were interpreted in Kersaji Dhanjibhai vs. Barjorji Bhakaji, 45 Bom.L.R.,725, as "ordinarily meaning anx order which makes an effectual partition and vests specific properties in the sharers giving them the right of recovering these shares without any further order." The decree passed in the present case merely declares that the parties are entitled to the property as tenants-in-common and not a joint tenants. It is true that by such declaration the shares of the parties are defined but the decree nowhere provides that specific properties are assigned to these sharers not does the decree give them the right to recover or the right of recovering these shares without

any further order of the Court. It is, therefore, not a decree containing any final order for effecting any partition within the meaning of section 2, clause (15). Consequently, the decree would not be liable to the xkxm stamp duty as a partition decree under article 45 of the Schedule to the Indian Stamp Act. The Advocate General's opinion No. 7, dated the 26th January 1939 does not discuss this aspect of the case and xhas no application to the present case.

Id/-

Remembrancer of Legal Affairs.

R.D.P.
23/6/56

S.C.